

*City of Las Vegas*

**AGENDA MEMO**

**PLANNING COMMISSION MEETING DATE: JANUARY 10, 2008**

**DEPARTMENT: PLANNING AND DEVELOPMENT**

**ITEM DESCRIPTION: VAR-25778 - APPLICANT: EXCEED PROPERTIES, INC. -**

**OWNER: EXCEED PROPERTIES, INC., ET AL.**

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**\*\* CONDITIONS \*\***

**STAFF RECOMMENDATION: DENIAL.** If Approved, subject to:

**Planning and Development**

1. Conformance to the conditions for Rezoning (ZON-25776), Special Use Permits (SUP-25775 and SUP-25779) and Site Development Plan Review (SDR-25773), if approved.
2. This approval permits a deviation from LVMC Title 19.08.030 (C) – Building Heights Along Streets Classified as Collector or Larger setback requirements to allow only a 10-foot setback at 65 feet where a 1:1 setback-to-height ration is required for the portion of the building above 35 feet at Sahara Avenue would otherwise be required.
3. This approval shall be void two years from the date of final approval, unless a certificate of occupancy has been issued or upon approval of a final inspection. An Extension of Time may be filed for consideration by the City of Las Vegas.

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**\*\* STAFF REPORT \*\***

**PROJECT DESCRIPTION**

This is a request for a Variance to allow no setback where a 1:1 setback-to-height ratio is required along a street classified as Collector or larger for a proposed Mixed-Use Development on 7.02 acres adjacent to the northeast corner of Sixth Street and Sahara Avenue. The size and massing of this project is not compatible with the land use context of this neighborhood, which consists of mainly small shops and single family residences. The recommendation is therefore for denial.

**BACKGROUND INFORMATION**

<i>Related Relevant City Actions by P&amp;D, Fire, Bldg., etc.</i>	
Month/date/year	Action
03/04/92	The City Council approved the appeal from the Planning Commission denial of a request for a Rezoning (Z-0107-91) from R-1 (Single Family Residential) and C-1 (Limited Commercial) to R-PD40 (Residential Planned Development – 40 Units per Acre) on 3.3 acres located on the east side of 6th Street north of Sahara Avenue. The request included a deviation from the five-acre minimum site area for an R-PD project (this now requires a variance). The City Council placed a condition on the approval restricting the rezoning to R-PD25 (Residential Planned Development – 25 Units per Acre) with a maximum of 84 units. A General Plan Amendment was not required. The Rezoning was subject to a 12-month Resolution of Intent. Staff recommended approval of the Rezoning on condition that it be restricted to R-PD36 (Residential Planned Development – 36 Units per Acre).
07/15/92	The City Council approved a Plot Plan Review [Z-0107-91(1)] for a proposed two-story, 84-unit condominium development on 3.3 acres on the east side of 6th Street north of Sahara Avenue. Staff recommended approval. (There was no Planning Commission hearing.)
07/23/92	The Planning Commission approved a Tentative Map (TM-0045-92) for an 84-unit condominium subdivision (Sixth Street Condominiums) on 3.3 acres located on the east side of 6th Street north of Sahara Avenue. Staff recommended approval.
10/22/92	The Planning Commission approved a name change [TM-0045-92(1)] of an approved Tentative Map (TM-0045-92) from Sixth Street Condominiums to Sahara Courtyards Condominiums. Staff recommended approval. The Planning Commission subsequently approved the Final Map (FM-0085-92) of Sahara Courtyards Condominiums. This map recorded on 05/21/93.

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04/21/93	The City Council approved a Special Use Permit (U-0031-93) to allow the sale of beer and wine within an existing restaurant at 600 East Sahara Avenue. The Board of Zoning Adjustment and staff recommended approval.
04/14/94	The Planning Commission approved a Plot Plan Review [Z-0107-91(2)] for a proposed two-story, 84-unit condominium development (12 buildings) on 3.3 acres on the east side of 6th Street north of Sahara Avenue. Staff recommended approval.
07/14/94	The Planning Commission approved an Amended Final Map [FM-0085-92(1)] for Sahara Courtyards Condominiums on 3.1 acres on the east side of 6th Street north of Sahara Avenue. The purpose of amending the map was to change the configuration of condominium units. The map was never recorded.
08/06/03	The City Council passed R-108-2003 adopting the Beverly Green/Southridge Neighborhood Plan.
08/04/04	The City Council tabled a request (GPA-4332) to amend a portion of the Southeast Sector Plan of the General Plan from SC (Service Commercial) to M (Medium Density Residential) on 3.16 acres on the east side of 6th Street, approximately 360 feet north of Sahara Avenue. The Planning Commission and staff recommended approval.
01/13/05	The Planning Commission voted to Withdraw Without Prejudice a request (GPA-5661) to amend a portion of the Southeast Sector Plan of the General Plan from SC (Service Commercial) to H (High Density Residential) on 3.2 acres on the east side of 6th Street, approximately 360 feet north of Sahara Avenue. Staff recommended denial.
01/10/07	The Planning Commission will hear related cases for a Rezoning (ZON-25776), two Special Use Permits (SUP-25775 and SUP-25779) and a Site Development Plan Review (SDR-25773) on the subject site. Staff recommends denial of these items.
<b><i>Related Building Permits/Business Licenses</i></b>	
Month/date/year	Description
03/22/89	A building permit (#89018670, Plan Check M-162-89) was issued for an interior remodel of an existing restaurant at 600 East Sahara Avenue. A final inspection was completed 04/06/89.
09/13/91	A business license (C11-04092) was issued for a masonry contractor at 604 East Sahara Avenue. The most recent issuance was on 02/27/97. The license is still active.
06/01/93	A business license (L09-00087) was issued for a beer/wine/cooler on-sale establishment at 600 East Sahara Avenue. The most recent issuance was on 10/02/03. The license is still active.
01/29/99	A business license (A01-01074) was issued for an administrative office at 610 East Sahara Avenue, Suite #1 for an existing onsite restaurant. The license remains active.

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09/27/01	A business license (R10-00045) was issued for a catering service at 600 East Sahara Avenue. The most recent issuance was on 12/17/02. The license remains active.
12/13/02	The most recent business license (R09-00027) for a restaurant at 620 East Sahara Avenue was issued. The license remains active.
10/01/03	The most recent business license (R09-00070) for a restaurant at 600 East Sahara Avenue was issued. The license remains active.
02/15/07	A building permit (#07000608, Plan Check L-889-06) was issued for a tenant improvement (stone entry/floor plan remodel) for a certificate of occupancy at 620 East Sahara Avenue. A final inspection was completed 05/15/07.
<b><i>Pre-Application Meeting</i></b>	
11/16/07	<p>Staff listed and described all applications to be submitted. Major issues included the following:</p> <ul style="list-style-type: none"> <li>• The primary issue was the multiplicity of General Plan designations over the site (C, SC and L) and whether the full site would be included in the Downtown Redevelopment Area when it is all reverted to one parcel. The applicant was advised to submit a General Plan Amendment for the SC and L parcels while an answer was sought.</li> <li>• A Waiver of residential adjacency standards is to be included with the Site Development Plan Review request.</li> <li>• A Merger and Resubdivision map would need to be recorded prior to issuance of permits.</li> <li>• NDOT approval is required for any driveway on Sahara.</li> <li>• Subterranean parking was an issue, due to the high water table in the area and the expense of digging through hard caliche.</li> <li>• The applicant was informed of the strict time limits on any future Tentative Map approvals—project must be completed within two years or a new map must be submitted.</li> <li>• A Development Impact Notice and Assessment and Project of Regional Significance questionnaire must be completed, signed and submitted as part of the submittal package.</li> <li>• A neighborhood meeting is required if a General Plan Amendment application is submitted; however, a meeting was recommended even if a GPA is not submitted.</li> <li>• The area on the site plan labeled “Central Plant” needed to be more detailed for the submittal.</li> </ul>
<b><i>Neighborhood Meeting</i></b>	
A neighborhood meeting is not required for this application. The applicant is planning to hold an optional meeting for neighborhood residents prior to the 01/10/08 Planning Commission meeting; however, as of 12/20/07, no meeting date has been set. The applicant has indicated that several informal meetings with nearby residents have already been conducted.	

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<b>Field Check</b>	
12/06/07	The south side of the site is developed with a shopping center and two restaurant pads. There is a large mobile storage container in the parking lot area of the shopping center. A low wall with an approximately eight-foot wrought iron fence is located along the north property line of the shopping center. Along 6th Street to the north is a radio station, also with a mobile storage container in the parking area. The rest of the site is undeveloped, except for a private street that is an extension of the road servicing several office buildings to the east of the subject site. This street terminates in a cul-de-sac with an arm jutting out. Cut-through traffic across the site from 6th Street to this private street was observed, although there are no curb cuts on 6th Street except at the radio station.

<b>Details of Application Request</b>	
<b>Site Area</b>	
Gross Acres	7.02

<b>Surrounding Property</b>	<b>Existing Land Use</b>	<b>Planned Land Use</b>	<b>Existing Zoning</b>
Subject Property	Shopping Center, Restaurants	C (Commercial) – Downtown Redevelopment Plan	C-1 (Limited Commercial)
Subject Property	Radio Broadcasting, Undeveloped	SC (Service Commercial)	R-1 (Single Family Residential), R-PD25 (Residential Planned Development – 25 Units per Acre)
North	Undeveloped	SC (Service Commercial)	R-1 (Single Family Residential)
North	Single Family Residential, Undeveloped	L (Low Density Residential)	R-1 (Single Family Residential)
South	Auto repair, Multi-Family Residential (Apartments) - Clark County	CT (Commercial Tourist – Clark County Designation)	C-2 (General Commercial – Clark County Designation), H-1 (Limited Resort and Apartment – Clark County Designation)
East	Restaurant, Office; Cul-de-sac;	C (Commercial) – Downtown Redevelopment Plan	C-1 (Limited Commercial)
East	Single Family Residential	L (Low Density Residential)	R-1 (Single Family Residential)

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West	Auto Parts (New and Rebuilt)	SC (Service Commercial)	C-1 (Limited Commercial)
West	Single Family Residential	L (Low Density Residential)	R-1 (Single Family Residential)

<i>Special Districts/Zones</i>	<i>Yes</i>	<i>No</i>	<i>Compliance</i>
<b>Special Area Plan</b>			
Beverly Green/Southridge Neighborhood Plan	X		N*
Redevelopment Plan Area (C – Commercial)	X		Y**
<i>Special Districts/Zones</i>	<i>Yes</i>	<i>No</i>	<i>Compliance</i>
<b>Special Purpose and Overlay Districts</b>			
A-O Airport Overlay District (175 Feet)	X		N
<b>Trails</b>		X	N/A
<b>Rural Preservation Overlay District</b>		X	N/A
<b>Development Impact Notification Assessment</b>	X		Y
<b>Project of Regional Significance</b>	X		Y

\*The “Current Conditions” section of the Beverly Green/Southridge Neighborhood Plan highlights several issues such as the encroachment of commercial redevelopment in the neighborhood and increased traffic. This is discussed in greater detail in the accompanying Site Development Plan Review (SDR-25773).

\*\*Only APN 162-03-801-099, which contains existing retail and commercial uses, is located within the Downtown Redevelopment Area.

## **INTERAGENCY ISSUES**

Pursuant to Ordinance No. 5477, the proposed project is deemed to be a “Project of Regional Significance,” triggered by the request for a Special Use Permit within 500 feet of the City’s boundary with unincorporated Clark County. Two Special Use Permits are requested in conjunction with this project. In addition, the request for 1,105 residential units requires a Development Impact Notice and Assessment pursuant to Ordinance No. 5227.

An Environmental Impact Assessment questionnaire was circulated to the affected Agencies and Entities for the mandated 15-day period. A summary of the comments received, including recommendation for mitigation measures is as follows:

- The Collection Systems Planning section of the city of Las Vegas Department of Public Works comments that in respect to wastewater, the developer of this project shall provide a sewer connection & abandonment plan of any existing sewer lines within this project to the Collection Systems Planning section of The City of Las Vegas per Section 10 of the Development Impact Notice and Assessment (DINA).

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- The City of Las Vegas Flood Control Section of the Department of Public Works will require a technical drainage study for the related Site Development Plan Review (SDR-25773) for this mixed use project.
- The Metropolitan Police Department has determined that the proposed project has the potential to increase calls for service and increase response times in the Downtown Area Command.

The Planning Commission shall consider the Environmental Impact Assessment and the proposed mitigation measures prior to making a decision on the proposal.

### **DEVELOPMENT STANDARDS**

Pursuant to Title 19.08.030(C), building heights along streets classified as Collector or larger are subject to additional setback requirements. Buildings may be constructed up to 35 feet in height at the front yard setback line; any portion of a building over 35 feet in height shall be set back an additional one foot for each foot of height in excess of 35 feet. Sahara Avenue is designated as a Primary Arterial by the city's Master Plan of Streets and Highways; therefore, the additional setback applies to the Sahara frontage of the project.

The mixed use commercial and residential tower as proposed is located at the 20-foot front yard setback line along Sahara Avenue, and rises for 65 feet before stepping north approximately 10 feet. The building then rises to 500 feet at a setback of approximately 30 feet from the Sahara Avenue right-of-way. The structure does not comply with the requirements of Title 19.08.030(C), thereby requiring the submittal of the Variance request.

### **ANALYSIS**

The proposed mixed-use development on the subject site front onto both Sahara Avenue and 6th Street; however, only the south elevation facing Sahara Avenue is subject to the additional setback requirements beyond the normal 20-foot front yard setback requirement in the C-1 (Limited Commercial) District. In order to comply with the standard, the building would need to be set back a minimum of 50 feet from the front yard setback line for the initial 65 feet of height, and then set back 515 feet from the front yard setback line for the ultimate height of 500 feet. In lieu of the additional setbacks, compliance could be attained by sloping the top of the building north from the front setback line at a 45-degree angle.

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The applicant does not specifically address the design issues in relation to the request for the variance. However, the applicant does assert that approval of the project will allow the city to meet many of its design goals and objectives for land use, urban form, pedestrian environment, and image and character in and adjacent to downtown Las Vegas. Staff does not support the size and massing of this project in relation to the land use context of this location. Conformance to Code requirements would reduce the number of developable units; however, it would also assist in reducing the massing of the project, and make it more compatible within its context and with the existing structures in the neighborhood.

## **FINDINGS**

In accordance with the provisions of Title 19.18.070(B), the Planning Commission and City Council, in considering the merits of a Variance request, shall not grant a Variance in order to:

1. Permit a use in a zoning district in which the use is not allowed;
2. Vary any minimum spacing requirement between uses;
3. Relieve a hardship which is solely personal, self-created or financial in nature.”

Additionally, Title 19.18.070(L) states:

“Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of enactment of the regulation, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the piece of property, the strict application of any zoning regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of the property, a variance from that strict application may be granted so as to relieve the difficulties or hardship, if the relief may be granted without substantial detriment to the public good, without substantial impairment of affected natural resources and without substantially impairing the intent and purpose of any ordinance or resolution.”

No evidence of a unique or extraordinary circumstance has been presented, in that the applicant has created a self-imposed hardship in designing a structure that fails to meet the required 1:1 setback-to-height ratio beyond the setback line. Stepping the building back from Sahara Avenue would allow conformance to the Title 19 requirements. In view of the absence of any hardships imposed by the site’s physical characteristics, it is concluded that the applicant’s hardship is preferential in nature, and it is thereby outside the realm of NRS Chapter 278 for granting of Variances.



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**NEIGHBORHOOD ASSOCIATIONS NOTIFIED** 11

**ASSEMBLY DISTRICT** 9

**SENATE DISTRICT** 10

**NOTICES MAILED** 316

**APPROVALS** 2

**PROTESTS** 0